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CONCERNING THE ALASKAN BOUNDARY.

THE geographical limits of the dominions of the Emperor of all the Russias on the continent of America, ceded by him to the United States according to the terms of the treaty of March 30, 1867, were set forth in that convention in the following words:

"The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain of February 28 = 16, 1825, and described in articles III. and IV. of said convention, in the following terms: —

"III. 'Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in a parallel of 54 degrees 40 minutes north latitude, and between 131st and 133d degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains parallel to the coast as far as the point of intersection of the 141st degree of west longitude (of the same meridian); and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation, as far as the frozen ocean.'

"IV. With reference to the line of demarcation laid down in the preceding article, it is understood — First — That the island called Prince of Wales Island shall belong wholly to Russia (now, by this cession to the United States).

"Second — That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention,) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."¹

According to the terms of the convention recently negotiated by Mr. Hay and Sir Michael Herbert, and ratified by the Senate,

¹ Treaties and Conventions Concluded between the United States and other Powers, p. 939. Washington: 1889.

February 11, 1903, a tribunal consisting of six impartial jurors, three appointed by the President, and three appointed by the King, shall endeavor to determine the Alaskan boundary and shall consider in making its decision the articles quoted above from the Russian-American treaty, and particularly articles III., IV. and V. of the earlier treaty of 1825.¹ With reference to these articles it is provided that the tribunal shall answer and decide the following questions:

"1. What is intended as the point of commencement of the line?

"2. What channel is the Portland Channel?

"3. What course should the line take from the point of commencement to the entrance to Portland Channel?

"4. To what point on the fifty-sixth parallel is the line to be drawn from the head of the Portland Channel, and what course should it follow between these points?

"5. In extending the line of demarcation northward from said Point on the parallel of the 56th degree of north latitude, following the crest of the mountains situated parallel to the coast until its intersection with the 141st degree of longitude west from Greenwich, subject to the condition that if such line should anywhere exceed the distance of ten marine leagues from

¹ "III. A partir du Point le plus méridional de l'île dite *Prince of Wales*, lequel Point se trouve sous la parallèle du 54me degré 40 minutes de latitude Nord, et entre le 131me et le 133me degré de longitude Ouest (Méridien de Greenwich), la dite ligne remontera au Nord le long de la passe dite *Portland Channel*, jusqu'au Point de la terre ferme où elle atteint le 56me degré de latitude Nord: de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la Côte, jusqu'au point d'intersection du 141me degré de longitude Ouest (même Méridien); et finalement du dit point d'intersection, la même ligne méridienne du 141me degré formera, dans son prolongement jusqu'à la mer Glaciale, la limite entre les Possessions Russes et Britanniques sur le Continent de l'Amérique Nord-Ouest.

IV. Il est entendu, par rapport a la ligne de démarcation déterminée dans l'Article précédent:

1°. Que l'île dite *Prince of Wales* appartiendra toute entière a La Russie:

2°. Que partout où la crête des montagnes qui s'étendent dans une direction parallèle à la Côte depuis le 56me degré de latitude Nord au point d'intersection du 141me degré de longitude Ouest, se trouveroit à la distance de plus de dix lieues marines de l'Océan, la limite entre les Possessions Britanniques et la lisière de Côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la Côte, et qui ne pourra jamais en être éloignée que de dix lieues marines.

V. Il est convenu en outre, que nul Établissement ne sera formé par l'une des deux Parties dans les limites que les deux Articles précédens assignent aux Possessions de l'Autre. En conséquence, les Sujets Britanniques ne formeront aucun Établissement soit sur la côte, soit sur la lisière de terre ferme comprise dans les limites des Possessions Russes, telles qu'elles sont désignées dans les deux Articles précédens; et, de même, nul Établissement ne sera formé par des Sujets Russes au delà des dites limites.

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the ocean, then the boundary between the British and the Russian territory should be formed by a line parallel to the sinuosities of the coast and distant therefrom not more than ten marine leagues, was it the intention of said convention of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, not exceeding ten marine leagues in width, separating the British possessions from the bays, ports, inlets, havens, and waters of the ocean, and extending from the said point on the 56th degree of latitude North, to a point where such line of demarcation should intersect the 141st degree of longitude west of the meridian of Greenwich?

"6. If the foregoing question should be answered in the negative, and in the event of the summit of such mountains proving to be in places more than ten marine leagues from the coast, should the width of the *lisière*, which was to belong to Russia be measured (1) from the mainland coast to the ocean, strictly so-called, along a line perpendicular thereto; or (2) was it the intention and meaning of the said convention, that where the mainland coast is indented by deep inlets, forming part of the territorial waters of Russia, the width of the *lisière* was to be measured (a) from the line of the general direction of the mainland coast, or (b) from the line separating the waters of the ocean from the territorial waters of Russia, or (c) from the heads of the aforesaid inlets?

"7. What, if any, are the mountains referred to as situated parallel to the coast, which mountains, when within ten marine leagues from the coast, are declared to form the eastern boundary?"

The purpose of this paper is solely to consider the problem indicated in the fifth question, concerning the intention of the convention of 1825 with reference to the boundary from the point on the 56th degree of north latitude to the intersection of the 141st degree west longitude, the nature of the line between these points, and the method of its demarcation. It is, therefore, necessary to examine with care the several negotiations preliminary to the Anglo-American treaty in the light of the published correspondence relating thereto.¹

¹ A lucid and authoritative article concerning this correspondence, by Hon. John W. Foster, Ex-Secretary of State, appeared in *National Geographic Magazine*, Vol. X. p. 425. See also paper by Thomas Hodgins on *The Canada-Alaska Boundary Dispute*, *The Contemporary Review*, August, 1902, p. 190; *The Alaskan Boundary*, by Professor J. B. Moore, *North American Review*, Vol. 169, p. 501; *The Alaskan Boundary*, by Horace Townsend, *Fortnightly Review*, Vol. 72, p. 490; *The Alaskan Boundary Dispute*, by Professor Chas. N. Gregory, No. 315, *Law Magazine and Review*, February, 1900; unsigned leading article, No. 392, *Edinburgh Review*, April, 1900, p. 279; *Statement of Facts regarding the Alaska Boundary Question*, compiled for the Government of British Columbia by Alexander Begg, Victoria, B. C., 1902; *The Alaska Frontier*, by Thomas W. Balch, Philadelphia, 1903.

In order to do this intelligently, it is well to note the contour of the northwest coast of America between Mount St. Elias at the north and Dixon Entrance at the south, as shown on the accompanying map. It will be observed that the coast between these points is indented irregularly by long arms of the sea, continuous in width, of great depth, and forming a connecting line of straits between the mainland and the large islands which breast the ocean. These fiords taken with the peninsulas and islands which separate them from the sea constitute a well-defined parallelogram, cutting into the northwest coast.

It is well known that the negotiations leading up to the treaty of 1825 grew out of the desire on the part of Great Britain to secure the renunciation by the Emperor of Russia of the pretensions made by him in his Ukase of 1821, by the terms of which that monarch claimed exclusive right of jurisdiction for a distance of one hundred Italian miles over the ocean from 45° 50' north latitude on the Asiatic coast to the northward, and southeasterly on the northwest coast of America to 51° north latitude. This decree prohibited foreign vessels from approaching Russian territory within these limits, while the pursuit of all commerce was exclusively granted to Russian subjects. It was also desired by Great Britain to fix the limits between the English and Russian possessions on the northwest coast of America; but the determination of the boundary was a matter of secondary importance to the British Foreign Office.¹

The negotiations were carried on at St. Petersburg by Count Nesselrode and M. Poletica in behalf of Russia, and by Sir Charles Bagot, the British Ambassador, under the instructions of Mr. George Canning, the Secretary of State for Foreign Affairs. These instructions were prepared under the guidance of Mr.

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 446. Mr. George Canning said, in writing to Mr. Stratford Canning: "The whole negotiation grows out of the Ukase of 1821. So entirely and absolutely true is this proposition that the settlement of the limits of the respective possessions of Great Britain and Russia on the northwest coast of America was proposed by us only as a mode of facilitating the adjustment of the difference arising from the Ukase by enabling the Court of Russia, under cover of the more comprehensive arrangement, to withdraw, with less appearance of concession, the offensive pretensions of that Edict.

"It is comparatively indifferent to us whether we hasten or postpone all question respecting the limits of territorial possession on the Continent of America, but the pretensions of the Russian Ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it."

Pelly, Chairman of the Hudson's Bay Company, who had informed the Secretary that the most southern establishment of Russia on the northwest coast of America was on a small island, in latitude 57° , that there was no Russian settlement on the mainland, nor any commerce to the eastward of the coast. Mr. Pelly suggested, therefore, "either the channel between the islands and the mainland, as the most desirable line of demarcation to the eastward, which being agreed to, the line to the southward might be drawn so as to comprehend Sitka and all the Russian settlements upon the islands."¹ Sir Charles Bagot was given greater freedom, however, and was informed that, "if necessary, the line must be drawn on the mainland to the northernmost post of the North-West Company from east to west till it strikes the coast, and thence may descend to whatever latitude may be necessary for taking in the island on which Sitka stands."² Mr. Canning was doubtful how far to the eastward the claims of Russia might be extended on the mainland, from whatever point might be agreed upon as the southern limit of her possessions. Therefore his advice on this point to his Ambassador is significant:

"It is absolutely essential, therefore, to guard against any unfounded pretension or any vague expectation of Russia to the eastward, and for this purpose it is necessary that whatever degree of latitude be assumed, a definite degree of longitude should be also assigned as a limit between the territorial rights of the two Powers. . . . It would, however, in that case, be expedient to assign with respect to the mainland south of that point, a limit, say of 50 or 100 miles from the coast, beyond which the Russian posts should not be extended to the eastward. We must not on any account admit the Russian territory to extend at any point to the Rocky Mountains."³

With such instructions Sir Charles Bagot made a definite proposition for the demarcation of the boundary line. He proposed that it be drawn through Chatham Straits to the head of Lynn Canal, thence northwest to the 140th degree of longitude⁴ (line A, Map). A written *contre-projet* was offered in behalf of Russia. In this document Russia claimed the territory as far south as the 55th degree, supporting this contention by the limits assigned to Russian possessions by the Charter granted by the Emperor Paul to the Russian-American Company in 1799. In view of the fact that the 55th degree of north latitude cut through Prince of Wales

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 417.

² Ibid. 419.

³ Ibid. 419-420.

⁴ Ibid. 424.

Island the proposition was made that this island be wholly within Russian territory. The Russian plenipotentiaries expressed the wish to have the line pass up Portland Channel to the mountains which bordered on the coast, thence along the mountains parallel to the sinuosities of the coast as far as the 139th degree west longitude. The following reason was assigned for such a line:

“Le motif principal qui force la Russie à insister sur la souveraineté de la lisière indiquée plus haut sur la terre ferme depuis le Portland Canal jusqu’au point d’intersection du 60 avec le 139 longitude, c’est que, privée de ce territoire, la Compagnie Russe-Américaine n’auroit aucun moyen de soutenir les Établissements qui seroient dès lors sans point d’appui, et qui ne pourroient avoir aucune solidité.”¹

In return Russia offered to give to British subjects free navigation of all the rivers “qui aboutissent à l’Océan dans cette même lisière.” The opening of the Russian Port of New Archangel to British subjects was made a further inducement for the acceptance of this proposition.

It is clear that the sense of a need of a continuous strip of Russian mainland from Portland Channel to the intersection of the 139th degree of west longitude caused the Russian plenipotentiaries to refuse the British proposition.

The Russian *contre-projet* was unacceptable to Sir Charles Bagot. He stated that a line drawn according to the Russian plan would deprive Great Britain of the sovereignty of all the inlets and small bays between latitudes 56° and 54° 45' the greater portion of which were in direct communication with the establishments of the Hudson’s Bay Company, and of peculiar importance to its commerce. He further contended that the Russian-American Company did not possess a single establishment on the mainland between the parallels of latitude mentioned.²

Thereupon Sir Charles Bagot made a second offer. He proposed to draw the line between Admiralty Island to the north and Duke of York and Prince of Wales islands to the south directly to the mainland, “coupled with the concession,” as he writes, “of a line of coast extending 10 marine leagues into the interior of the continent”³ (see line B, Map).

His proposal to Russia was expressed in the following language:

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 427.

² Ibid. 427-428.

³ Ibid. 424.

"La Grande-Bretagne proposeroit de prendre pour ligne de démarcation entre des territoires des deux Puissances une ligne tracée de l'ouest vers l'est, par le milieu du canal qui sépare les Îles du Prince de Galles et du Duc d'York de toutes les îles situées au nord des dites îles jusqu'à ce qu'elle touche la terre ferme. De là se prolongeant dans la même direction sur la terre ferme jusqu'à un point distant de la côte de 10 lieues marines, la ligne remonteroit de ce point vers le nord et le nord-ouest, parallèlement aux sinuosités de la côte, et toujours à la distance de 10 lieues marines du rivage, jusqu'à 140 degré de longitude (de Greenwich) dont elle suivroit alors du prolongement jusqu'à la Mer Polaire."¹

Reference to the map indicates that this second British offer placed the southern boundary of Russia on the continent at a point lower than the 57th degree of north latitude. Sir Charles Bagot's comment on the scope of his proposal is significant:

"La Ligne . . . assureroit à la Russie non seulement une lisière sur le continent, vis-à-vis de . . . l'Établissement le plus méridional qu'elle possède sur les îles, mais qui lui assureroit aussi la possession de toutes les îles et les eaux qui l'avoisinent, ou qui se trouvent placées entre cet Établissement et la terre ferme, la possession enfin de tout ce qui pourroit devenir, par la suite, de quelque utilité, ou pour la solidité ou pour sa prospérité."²

It is apparent that it was the intention of the British ambassador that, if the Russian frontier could be limited on the south by the line suggested by himself, the channels and straits to the north should remain under exclusive Russian control, as well as the strip of mainland which they bounded; that Russian sovereignty over such waters, whether outside straits or fiords penetrating far inland, should include at every point an adjacent strip of the coast; that north of the line agreed upon there should be an unbroken belt of water and mainland. The Russian plenipotentiaries objected to this second proposal on the ground that without a strip of land along the edge of the continent starting from Portland Channel, the Russian establishments on the neighboring islands would be without a base of support, and at the mercy of foreign settlements which might be made on the mainland.³

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 428.

² Ibid. 429.

³ Ibid. 429. "D'autre part, les Plenipotentiaires de Russie ont l'honneur de lu observer itérativement, que sans une lisière sur la côte du continent à partir du Portland Channel, les Établissements Russes des îles du voisinage n'auroient aucun point d'appui; qu'ils seroient à la merci de ceux que des étrangers formeroient sur la terre ferme, et que tout arrangement semblable, loin d'être fondé sur le principe des convenances mutuelles, ne presenteroit que des dangers à l'une des Parties et des avantages exclusifs à l'autre."

In his reply Sir Charles Bagot stated that discovery and occupation of islands should not give Russia rights on the mainland south of her actual establishments on the coast; that there were no Russian settlements on the mainland south of the 60th degree of north latitude; that the Hudson's Bay Company was established on the mainland north of the 55th degree north latitude and near the coast; that Great Britain could not renounce the sovereignty of the coast south of $56^{\circ} 30'$ without sacrificing the interests of that corporation; that it was of great importance to his government to retain control over both banks of Portland Channel inasmuch as it was the outlet of a river dividing the territory occupied by the British Company. He thereupon made a third proposal as to the line of demarcation, suggesting that it be drawn from the southernmost extremity of Prince of Wales Island, through the middle of the Duke of Clarence Sound, as far as the middle of the channel separating Prince of Wales and Duke of York islands from those situated to the north, thence eastward in the middle of that channel to the mainland and thence to be prolonged according to his second proposal¹ (see line C, Map).

This proposal also was unsatisfactory to Russia, for the reason, it was contended, that Prince of Wales Island would be valueless without the support of a portion of the mainland coast situated opposite, and that deprived of such a base the Russian settlements established on that island would be flanked by English settlements on the opposite mainland and wholly at their mercy. The Russian plenipotentiaries further called attention to recent maps showing no English establishments on the northwest coast of America south of $54^{\circ} 40'$.² Thereupon Sir Charles Bagot broke off negotiations.

Shortly thereafter Mr. Canning wrote to Count Lieven, the Russian Ambassador at London, informing him that Sir Charles Bagot's discretion would be enlarged so as to enable him to admit

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 429. This line was intended to run north of the small island known as Zarembo Island, rather than between it and Etolin Island, which was formerly known as Duke of York Island. According to Vancouver's map, which was the map used by the negotiators of the treaty of 1825, the words "Duke of York's Island" is attached to the territory comprising both Zarembo and Etolin islands, but which according to the map constitute a single island. Probably it was not known to the explorer that a channel separates what appeared to him to be a single piece of land. The natural channel between Prince of Wales Island, and the islands to the north, passes to the north of Zarembo Island.

² Ibid. 430.

with certain qualifications the last proposals of the Russian government.¹

Accordingly, the British Ambassador was given new instructions and furnished with a draft of a treaty. With reference to the easterly boundary Sir Charles Bagot was warned that it would be dangerous to determine the line merely by means of the mountain range along the coast, in view of the fact that mountains were often incorrectly laid down in the maps, and that therefore there should be some other security taken to prevent the line being carried too far inland. To provide for this difficulty, Mr. Canning suggested that the line "should in no case be carried further to the east than a specified number of leagues from the sea."² Article III. of his draft provided that the line "shall not, in any case, extend more than marine leagues in breadth from the sea towards the interior at whatever distance the aforesaid mountains may be."³ The general line of demarcation provided by Mr. Canning conformed to the Russian requirements. It included within Russian territory the Prince of Wales Island, and from the southern extremity thereof, the line was drawn through Portland Channel as far as the coast of the continent at the 56th degree of north latitude, thence along the coast in a direction parallel to its windings and at or within the seaward base of the mountains as far as 139th degree west longitude. Sir Charles Bagot was, however, given discretion to substitute the summit of the mountains for the "seaward base" with the proviso that "the stipulation as to the extreme distance from the coast to which the *lisière* is in any case to run, be adopted, and provided a stipulation be added that no forts shall be established or fortifications erected by either party on the summit or in the passes of the mountains."⁴

Mr. Canning was extremely desirous of securing for British subjects the permanent right to navigate and trade along the line of coast and islands to be assigned to Russia, as well as the right of navigation and commerce to and from rivers passing through the interior of the continent and crossing the *lisière* in their course to the sea.

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 432. "The qualifications will consist chiefly in a more definite description of the limit to which the strip of land required by Russia on the continent is to be restricted; in the selection of a somewhat more western degree of longitude as the boundary to the northward of Mount Elias; in precise and positive stipulations for the free use of all rivers which may be found to empty themselves into the sea within the Russian frontier, and of all seas, straits, and waters which the limits assigned to Russia may comprehend."

² Ibid. 433.

³ Ibid. 435.

⁴ Ibid. 437.

The full and permanent opening of the port of New Archangel to British commerce was also desired. Finally, he wished to obtain reciprocally for the vessels of both nations, for a period of years (twenty, if possible), the right of navigation and trade on "the other parts of the northwest coast of America, and of the islands adjacent thereto." He therefore inserted in his draft of a treaty articles to secure this end.¹

These propositions also were unsatisfactory to Russia. Her plenipotentiaries were unwilling to open the port of New Archangel to British commerce *forever*. They were quite unwilling to grant to British subjects *forever* the privilege of navigating and trading along the coast of the *lisière* between Portland Channel and the 60th degree north latitude.

In this connection they expressed a willingness to grant to British subjects such a liberty for ten years, and they were ready to grant a permanent right of ingress and egress into and from such rivers as emptied into the Pacific Ocean from the northwest coast within the *lisière*. They stated, however, that under no circumstances could they be induced "to grant to any power the privilege to navigate and trade in perpetuity with any country the full sovereignty of which was to belong to Russia; that such perpetual concession was repugnant to all national feeling, and was inconsistent with the very idea of sovereignty."² Finally, they objected to the reciprocal liberty of the subjects of each power to visit the other portions of the northwest coast for a term of years.

Again negotiations were broken off by Sir Charles Bagot. It is to be noted that the points of disagreement at this time related wholly to the use of waters and rights of navigation to be enjoyed by British subjects. The fact that throughout the discussion no

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 435. "That British subjects shall forever freely navigate and trade along the said line of coast, and along the neighboring islands.

"That the navigation and commerce of those rivers of the continent which cross this line of coast shall be open to British subjects as well to those inhabiting or visiting the interior of this continent as to those coming from the Pacific Ocean who shall touch at these latitudes.

"With regard to the other parts of the northwest coast of America, and of the islands adjacent thereto, belonging to either of the two High Contracting Parties, it is agreed that, for the space of years from the April, 1824, their respective vessels, and those of their subjects, shall reciprocally enjoy the liberty of visiting without hindrance the gulfs, havens, and creeks of the said coast, in places not already occupied, for the purpose of fishery and of commerce with the natives of the country."

² Ibid. 439, 440, 441.

distinction was made between the rights of British subjects to navigate the outer straits and channels and the inner bays and fiords, is very significant. If it had been the intention on the part of negotiators that the eastern line of the frontier between Portland Channel and the 140th degree of west longitude should cut across deep channels, the inference is reasonable that the right of British subjects to navigate such waters would have been discussed; and in any event the effort would have been made by the British plenipotentiary to secure express stipulations protecting the rights of his fellow subjects in the inner waters, although Russia might be unwilling to permit the free navigation of the outer straits and bays belonging to herself. It seems clear that it did not occur to Sir Charles Bagot or Mr. Canning on the one part, nor to the Russian plenipotentiaries on the other, that any of the waters or arms of the sea indenting the mainland coast between Portland Channel and the 140th degree of west longitude, should not be under exclusive Russian sovereignty.¹ For that reason no effort was made to distinguish between the inner and outer portions of deep bays and channels. This conclusion is fortified by the fact that Russia did acknowledge the right of British subjects to navigate rivers traversing British territory and crossing the *lisière* on their way to the sea. No waters other than rivers were had in contemplation between the termini mentioned which were to be other than Russian.

¹ It is true that prior to the beginning of negotiations with Sir Charles Bagot, Count Nesselrode in addressing the Russian ambassador at London spoke generously of the treatment to be accorded British settlements in Alaska. The following sentence, however, does not indicate that he was prepared to recognize British control over waters of the sea penetrating the mainland north of the southern frontier to be established: "Si l'on invoque le principe des convenances mutuelles, la Russie laisse au développement progressif des Établissements Anglois, une vaste étendue de côte et de territoire; elle leur assure de libres débouchés; elle pourvoit aux intérêts de leur commerce, et pour compenser tant d'offres dictées par le plus sincère esprit de conciliation, elle se réserve uniquement un point d'appui, sans lequel il lui seroit impossible de garder une moitié de ses domaines." *Fur Seal Arbitration Papers*, 1893, Vol. IV. p. 401. Nor do the words of the Russian plenipotentiaries expressed after their refusal of Sir Charles Bagot's second proposal during the first of the series of negotiations, suggest necessarily that the waters referred to were other than rivers, or that to Great Britain, in the final division of territory, should be assigned ports on the sea. "Les Plénipotentiaires de Sa Majesté Impériale, prévoyant même le cas où, sur la lisière de la côte qui appartiendrait à la Russie, il se trouveroit des fleuves au moyen desquels les Établissements Anglois pourroient communiquer avec l'Océan, se sont empressés d'offrir, par une stipulation éventuelle, la libre navigation de ces fleuves." *Ibid.* 429.

Again negotiations were resumed. Mr. S. Canning (subsequently Sir Stratford Canning) succeeded Sir Charles Bagot as the British plenipotentiary. He was reminded that the settlement of the boundary was of less consequence to his government than the renunciation by Russia of the claims set forth in the Ukase of 1821. He was informed that Great Britain was content to accept the period of ten years for the limit of the reciprocal liberty of access and commerce within the Russian and British possessions according to the terms of Article iv. of the treaty between the United States and Russia of 1824. Nor was objection made to the restrictions which Russia insisted upon with regard to the port of New Archangel. Finally, Mr. Canning said:

"It remains only, in recapitulation, to remind you of the origin and principles of this whole negotiation.

"It is *not*, on our part, essentially a negotiation about limits. It is a demand of the repeal of an offensive and unjustifiable arrogation of exclusive jurisdiction over an ocean of unmeasured extent; but a demand qualified and mitigated in its manner, in order that its justice may be acknowledged and satisfied without soreness or humiliation on the part of Russia.

"We negotiate about territory to cover the remonstrance upon principle."¹

The result was the treaty finally negotiated in 1825.²

Articles III. and IV. incorporated in the Russian-American treaty of 1867 have already been set forth. Article V. of the treaty of 1825 contained the following:—

"It is, moreover, agreed that no establishment shall be formed by either of the two parties within the limits which the two preceding articles assign to the possession of the other. Consequently British subjects shall not form any establishment either upon the coast or upon the mainland strip comprised within the limits of the Russian possessions as they are designated in the two preceding articles, and likewise, no establishment shall be formed by the Russian subjects beyond the said limits."³

From the examination of the entire series of negotiations between Russia and England leading up to the treaty of 1825, certain inferences as to the intention of the negotiators seem clear. In the first negotiations Sir Charles Bagot's chief object was to keep the southern boundary of the Russian possessions as far north as pos-

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 448.

² Line D on the map indicates the boundary line drawn according to the American interpretation of the Anglo-Russian treaty of 1825.

³ Translation, XII. Brit. and For. St. P. 40.

sible. The three lines on the accompanying map indicate how he was gradually forced to retreat from the head of Lynn Canal to the southernmost point of Prince of Wales Island. In his several propositions he indicated a willingness to run the boundary into the interior of the mainland. From the language used by him, as well as by the Russian plenipotentiaries, it was assumed that the British frontier north of any line to be agreed upon would not touch the coast or the waters indenting it. Nor is there any indication that Sir Charles Bagot intended that the strip of *lisière* should be any narrower or different from the strip which he suggested in his second proposal in the first of the series of negotiations. In none of the discussions between himself and the Russians did he suggest that Great Britain should retain sovereignty over a single point on the coast of the southern boundary of the Russian frontier. His appreciation of the fact that Russia would exercise its sovereign rights on the mainland over an unbroken territory caused him to make strenuous efforts to keep the Russian boundary as far north as possible.

It has been already noted that the second series of negotiations related chiefly to the rights of British subjects in the waters adjacent to the *lisière*. Again attention is called to the fact that the British plenipotentiary as well as Count Nesselrode and M. Poletica made no distinction between the claims of Great Britain respecting the right to navigate the waters, other than rivers, penetrating the coast. The implication is reasonable that the representatives of both countries believed that all such waters should belong exclusively to the power having sovereignty over the coast. The vigorous attempt on the part of England to secure the right of access to the channels and other waters along the coast *forever*, and the final agreement on her part to accept the privilege of navigation in such waters for the limited space of ten years, without making any attempt to reserve for her subjects the right to navigate the straits or bays adjacent to which she might retain sovereignty over the mainland coast, emphasizes strongly the fact that it did not occur to her representatives that England was to have dominion over any point on the mainland coast touching an arm of the sea.

Nothing appears in the last of the series of negotiations to indicate a different intention on the part of the British negotiators with reference either to the width of the *lisière* or the status of the waters penetrating it. The purpose of Great Britain candidly expressed above by Mr. George Canning in his final instructions to

Mr. Stratford Canning needs no comment. Great Britain was unsuccessful in her attempt to check the pretensions of Russian sovereignty north of $54^{\circ} 40'$. She expected to yield the mainland coast north of the most southerly point agreed upon; and she did so. She sought the right of access and navigation over the vast extent of inland waters separating the outer islands from the mainland coast along the *lisière*; and she failed. And yet withal she was willing to agree to the terms of the treaty of 1825 in order to secure a revocation of the Ukase of 1821. Whether or not the treaty actually concluded was an acknowledgment of the existing sovereignty of Russia over the territory assigned to her, is an immaterial question. From the British point of view there was good consideration for the sacrifice of rights in the withdrawal of the pretensions made by the Emperor in 1821.

British writers have laid much stress on the words used by the Russian plenipotentiaries to describe the *lisière*. Attention has been called to the expressions used by Count Nesselrode in describing the strip of coast: "*étroite lisière sur la côte*," "*une simple lisière du continent*," "*un médiocre espace de terre ferme*."¹ The expression "*point d'appui*" was more than once used to signify the desired strip of continent opposite Prince of Wales Island. It has been contended that such terms are not properly descriptive of a belt of mainland surrounding all arms of the sea along an extended coast line. It is argued that the words employed by Count Nesselrode preclude the intention imputed to him by the American government. In reply, it is suggested that inferences as to the intentions of the Russian plenipotentiary cannot fairly be drawn from isolated phrases culled from the published correspondence. It is further submitted that the expressions attributed to Count Nesselrode were not inappropriate to describe an unbroken coast line. In view of the enormous extent of British Columbia to the north and west of the boundary, a narrow strip of land only ten marine leagues in width might be appropriately termed "*une simple lisière du continent*," "*un médiocre espace de terre ferme*;" nor was the expression "*point d'appui*" inapt to denote the strip of land necessary to protect Prince of Wales Island from the encroachments of British traders.

It has been stoutly maintained that whatever may have been

¹ Fur Seal Arbitration Papers, 1893, Vol. IV. p. 399. Thomas Hodgins in The Contemporary Review, August, 1902, p. 191.

the claims of Russia in the preliminary negotiations, the language of the treaty of 1825 respecting the line between the Portland Channel and the 141st degree of west longitude conclusively indicates the soundness of the British contention that the *lisière* should be measured according to the general direction of the coast and without regard to the sinuosities of the same. Attention is called to the text:

"That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection to the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia, as above mentioned, (that is to say, the limit to the possessions ceded by this convention) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."¹

It has been argued that the word "ocean" (*l'océan*) indicating the distance of the line from the mountains in contrast to the word "sea" (*mer*) employed in the earlier drafts of the treaty is strong proof of the British contention² that "the line of demarcation of the Russian strip of coast was to be ten marine leagues from the ocean coast, and not from the upper shores of inlets, bays, or other arms of the sea."³ It is significant that the word "ocean" was used in the treaty merely to indicate the distance of the mountains from the water, and that wherever the mountains were beyond a specified distance from the "ocean," the width of the frontier should be measured not from the "ocean," but from the coast (*côte*); the word "ocean" was employed simply with reference to the location of the mountains.

But it is submitted that the word "ocean" was not employed by the negotiators of the treaty of 1825 in a technical sense, to indicate the unenclosed waters of the sea or high seas excluding

¹ XII. Brit. and For. St. P. 40.

² Leading article *Edinburgh Review*, No. 392, April, 1900, p. 279 (p. 295): "However relevant the word 'ocean' might be to those parts of bays which from their breadth and conformation are common international waters, it cannot with any accuracy be applied to inlets which by international law and common consent are parts of the territory of the country owning the shores thereat; and consequently the line, whether marked by mountains or by a survey line, should be drawn without reference to such inlets."

³ Thomas Hodgins, *Contemporary Review*, August, 1902, p. 193.

in its signification ports, harbors, channels, and straits denoted by the term "sea." If their intention had been to use the word in a restricted sense, the line of mountains referred to might have been those which rise from the several islands adjacent to the coast, and the method of locating the mountains would have rendered meaningless the method used to locate the frontier line at points where the mountains might be beyond the specified distance from the water, unless the word "coast" (*côte*) employed in the treaty signified the ocean coast of the outer islands. Measurement of the line by such a method would place the frontier between the islands and the mainland, which was clearly not the intention of Great Britain or Russia in 1825. Examination of the correspondence above negatives conclusively any inferences of such intention.¹

It is urged by Great Britain that even though it be admitted that the boundary line be drawn in general along the mainland, the mountains referred to in the treaty as constituting the frontier are the low ranges within three to five miles of the coast; that the limit of the *lisière* should, in general, follow the crest of these mountains bringing the line close to the sea, and crossing low-lying valleys and arms of the sea or bays by means of a course measured from crest to crest; and that there should be no need of a continuous range or chain of mountains to justify such a course. Lack of space prevents detailed discussion in this paper of the reasons why it is unreasonable to assume that the plenipotentiaries intended these mountains to form the line of demarcation in such a way.²

¹ A significant admission on the part of a British writer is expressed in the Edinburgh Review for April, 1900, at p. 300: "On the letter of the treaty the British side has, we think, a decided advantage, prejudiced to some extent by extravagant claims put forward by over-zealous British Columbians, — such for instance, as that the coast refers to the outer shore of the islands, which would not allow the Americans any foothold on the continent at all, though the whole dispute is about a strip of coast on the mainland as distinct from the islands. Scarcely less tenable is the theory that Portland Channel of the treaty does not mean Portland Channel, but Clarence Strait, an entirely different body of water which Sir C. Bagot endeavored to get as the boundary and failed."

² On this point the language of Hon. John W. Foster, in National Geog. Mag., November, 1899, p. 436, is of interest: "This language of the treaty presupposes that there existed a defined mountain chain, to repeat its terms, 'situated parallel to the coast,' or 'which extends in a direction parallel to the coast;' but the surveys of the region made since the territory of Alaska was ceded to the United States have established the fact that there is no such defined chain or watershed within 10 marine leagues of the sinuosities of the coast except at two points, namely, White and Chilkoot passes; hence the United States claims that the boundary of the strip is placed

The principal objection to such a claim is the fact, as shown by the correspondence above examined, that it was not the plan of Russia to allow Great Britain to enjoy permanent rights in the waters penetrating the *lisière* (other than rivers), and that it did not occur to any of the plenipotentiaries that Great Britain should have the right of access to or navigation in those waters without the consent of Russia. A boundary line cutting across the arms of the sea at several points would have afforded Great Britain several deep sea ports, and, as has already been shown, would have rendered it a necessary precaution that her rights in the same should be safeguarded by express declarations in the treaty. This same reasoning would prevent the measurement of the width of the *lisière* from the line of the general direction of the mainland coast, inasmuch as a strip of mainland though ten marine leagues in width, if measured in this way, regardless of the windings and deep inlets of the coast, would nevertheless cut across arms of the sea.

It has been frequently argued by British writers that the territorial waters of Russia on the outer coast of the islands adjacent to the sea as well as those lapping the mainland coast should be taken into consideration in measuring the width of the *lisière*. The rights of a state over waters adjacent to its ocean shore as well as over the bays and arms of the sea indenting its coast line are necessarily based on the law of nations, and owe their existence to the consent of civilized maritime states. That consent manifested in different ways gives to the individual state limited rights varying according to the geographical location of the waters in question. Although writers of repute and learned tribunals have failed to indicate with precision the rights of a state over its so-called territorial waters, all have agreed that the control which a nation may properly exercise over the waters adjacent to its ocean coast, even though within a limited distance, are much narrower than that which it may exercise over bays and channels within its limits.¹

Waters of either class are different from land in legal contemplation in the sense that they are not within the absolute control

10 marine leagues from the coast at all points except at White and Chilkoot passes, and that the strip is an unbroken belt of territory on the mainland, following the sinuosities of the coast around the inlets of the sea."

¹ Reg. v. Keyn, 2 Ex. D. 63; The Schooner Washington, Report of the Commission of Claims, 1853, p. 170; The Alleganean, 4 Moore's Internat. Arb. 4333.

of the state exercising sovereignty over the neighboring land. For that reason it would seem inappropriate to permit the territorial waters of Russia to be used in estimating the proper width of the *lisière*. This objection would be the stronger if the attempt were made to measure the strip of Russian territory along the Alaskan coast from the outer edge of the territorial waters adjacent to the coast of the outer islands. But the extent and nature of the territorial waters of Russia are really immaterial in determining the width of the *lisière* or the method of its demarcation, for the reason that the negotiators of the treaty of 1825 attempted to draw a frontier line which should not approach the sea or its inlets at any point between the head of Portland Channel and the 141st degree of west longitude.

To recapitulate: the communications between Russia and Great Britain leading up to the treaty of 1825 justify the conclusion that the line between the head of Portland Channel and the 141st degree of west longitude should follow the sinuosities of the coast, and that Russia was to have exclusive possession of a continuous strip of mainland not exceeding ten marine leagues in width and separating the British territory from the bays and inlets of the sea.

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